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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations	IB Docket No. 98-118

COMMENTS OF SBC COMMUNICATIONS INC. ON THE NOTICE OF PROPOSED RULEMAKING REGARDING INTERNATIONAL COMMON CARRIER REGULATIONS

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Comments of SBC Communications Inc. On the Notice of Proposed Rulemaking Regarding International Common Carrier Regulations

SBC Communications Inc. ("SBC") respectfully submits these comments in response to the Notice of Proposed Rulemaking ("NPRM" or "Notice") in the above-referenced docket. SBC applauds and supports the Commission's initiatives to streamline its international regulations. The Commission, however, should expand its deregulatory proposals and

1) adopt a blanket Section 214 authorization for carriers providing international services on routes where the carrier has an affiliation with a foreign carrier lacking market power;
2) forbear from Section 214 requirements for Commercial Mobile Radio Service ("CMRS") carriers providing international services; and
3) forbear from mandating international tariffs.

I. INTRODUCTION AND SUMMARY

SBC commends the Commission for initiating a review of its international common carrier regulations to determine if streamlining or eliminating certain rules would serve the public interest. As SBC stated in its Petition for Section 11 Biennial Review,[1] international competition is increasing dramatically, thereby eliminating the need for Commission regulatory oversight. SBC's Petition highlighted several international regulations that should be streamlined or eliminated, particularly the Commission's Section 214 authorization and tariffing requirements. SBC is pleased the agency has commenced this proceeding to reduce or remove outdated and overly burdensome regulations for international common carriers.

SBC supports the following proposed deregulatory measures:

1) adopting blanket Section 214 authorizations for carriers serving unaffiliated points;
2) eliminating prior review requirements for *pro forma* assignments and transfers of control of Section 214 authorizations;
3) permitting wholly-owned subsidiaries to provide service pursuant to their parents' Section 214 authorizations;
4) removing non-U.S. licensed submarine cables from the exclusion list;
5) reorganizing Part 63 to include a separate section for definitions, obligations of facilities-based carriers, and obligations of resale carriers; and
6) increasing the threshold for shareholder notification from 10 percent to 25 percent.

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[1] *See Petition for Section 11 Biennial Review*, at 24 (filed May 8, 1998).

Blanket Section 214 Authorization

The Commission should expand its proposals to streamline further or eliminate certain international common carrier regulations. SBC supports extending blanket Section 214 authorization to carriers providing international service to affiliated points where the foreign affiliate lacks market power. Foreign carriers without market power do not raise anticompetitive concerns because they lack the ability to affect competition adversely in the U.S. market. Further, the Commission would retain the authority to revoke or condition an authorization to address any anticompetitive effects.

CMRS Forbearance

The Commission also should forbear from applying its Section 214 authorization requirements to CMRS carriers providing international services. Competition in the international marketplace will ensure that consumer interests are protected and that rates and practices are just, reasonable and not unreasonably discriminatory. Forbearance would serve the public interest by eliminating delays in market entry and reducing administrative burdens.

International Tariffing

In addition, the Commission should eliminate other rules not addressed specifically in the Notice, but which fall within its deregulatory scope. The Commission should forbear from requiring tariffing of international services. Competition in the international marketplace will ensure that rates and practices are just and reasonable and that consumers' interests are safeguarded. Because nearly all U.S. carriers are non-dominant and do not raise anticompetitive concerns, the continued imposition of international tariffing requirements on these carriers actually disserves the public interest by inhibiting their ability to respond quickly and

competitively to market actions and reduce prices for consumers. Tariff filings are inconsistent with a competitive market because publishing pricing information inhibits the ability of carriers to compete effectively, for example, for service contracts with major customers. The competitive marketplace is much better served by permitting carriers to negotiate contracts without necessarily revealing all the terms and conditions to competitors. In the few instances where tariffing remains important, the Commission could preserve the tariff filing obligation as part of its dominant carrier regulations.

II. SBC Supports Granting Blanket International Section 214 Authorizations For Unaffiliated Points And Recommends Extending Such Authorizations To Affiliated Routes Where The Foreign Affiliate Lacks Market Power.

SBC fully supports the Commission's tentative conclusion that a blanket Section 214 authorization is warranted for carriers providing international services to unaffiliated points.[2] SBC agrees that "few if any grounds . . . warrant denial or conditioning of an authorization to serve a route where the applicant is not affiliated with a carrier operating in the destination market."[3] Further, SBC concurs that the agency's regulatory safeguards are sufficient to ensure that an application to provide international services on unaffiliated routes should never have to be denied in the first instance.[4]

Likewise, a blanket Section 214 authorization is warranted for carriers – both wireline and wireless – providing services on affiliated routes where the affiliate lacks market power.[5]

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[2] 1998 Biennial Regulatory Review - Review of International Common Carrier Regulations, Notice of Proposed Rulemaking, IB Docket No. 98-118, at 5 (July 14, 1998) ("*NPRM*").

[3] *Id.*

[4] *Id.*

[5] Carriers are familiar with determining whether their foreign carrier affiliates lack market power.

(Continued...)

Affiliations with such foreign carriers rarely, if ever, raise competitive concerns, as the Commission acknowledged in the *Foreign Participation Order*.[6] The agency modified its special concessions policy to allow U.S. carriers to enter special concessions with foreign carriers with under 50 percent market share.[7] The Commission reasoned that it was "unlikely that an exclusive deal involving a foreign carrier that lacks market power would result in harm to competition and consumers in the U.S. market."[8] Further, the agency determined that such carriers could not leverage their market position into the U.S. market, because they do not have the ability to restrict the supply of services or facilities necessary to provide international services to a degree that would result in increased prices.[9]

This analysis equally applies in the Section 214 context. Indeed, the Commission's current rules confirm that, on affiliated routes, the agency's concern centers on the ability of

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(...Continued)
See 47 C.F.R. §§ 63.10(a)(3), 63.11, 63.14 & 63.18(e)(2)(ii)(A)(2) & (e)(4)(i). Moreover, as the Commission recently recognized, "in most foreign markets, the determination of whether a carrier has market power is clear cut . . . ." *1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements*, IB Docket No. 98-148, ¶ 23 (Aug. 6, 1998). Therefore, carriers should have no difficulty determining whether they qualify for a blanket grant in light of their affiliation with a foreign carrier. In any event, because the carrier would have to notify the Commission once it commenced service under the blanket authorization, the agency could address any market power issues at that time, although these issues will rarely arise.

[6] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*FPO*").

[7] The FCC adopted a presumption that carriers with less than 50 percent market share on the foreign end lack sufficient market power to affect competition adversely in the U.S. market. *Id.* at 23959.

[8] *Id.* at 23958.

[9] *Id.*

affiliated foreign carriers to leverage market power on the foreign end to affect competition adversely in the U.S. market.[10] The reality is that foreign carriers without market power lack the ability to raise prices by restricting their output of services. Indeed, virtually every Section 214 application submitted to the agency involving an affiliation with such a foreign carrier is granted, even if challenged and removed from streamlining, because the Commission ultimately determines that the foreign affiliate lacks sufficient market power to harm competition and consumers in the U.S. market.[11] Accordingly, requiring carriers affiliated with such foreign carriers to seek specific authority to serve affiliated markets does not serve the public interest. It wastes limited FCC staff resources and provides established, large carriers a vehicle through which to oppose new market entry to suppress competition.

In any event, because the blanket authorization would require carriers to notify the Commission once they commence service on a particular route, the Commission could address competitive concerns, if any, regarding a specific foreign carrier affiliate by conditioning or revoking an authorization.[12] This approach appropriately shifts the burden of proof to opponents to demonstrate in particular cases that a U.S. carrier's foreign carrier affiliate has the ability to adversely affect competition in the United States. Thus, the great majority of carriers

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[10] *See* 47 C.F.R. §§ 63.10(a)(3), 63.11, 63.14 & 63.18(e)(2)(ii)(A)(2) & (e)(4)(i).

[11] *See, e.g., Bell Atlantic Communications, Inc., Order, Authorization and Certificate*, ITC-96-451 (Feb. 7, 1997); *NYNEX Long Distance Company, Order Authorization and Certificate*, ITC-96-520 (Feb. 7, 1997).

[12] The notification could require the carrier to cite a prior FCC finding that the foreign affiliate lacks market power or declare that the foreign affiliate has less than 50 percent market share on the foreign end and thus lacks the ability to affect competition adversely in the U.S. market.

immediately can begin providing international services without being derailed by competitors' calculated attempts to stall competition.

The Commission already has taken significant strides to streamline its Section 214 application process to reduce processing periods and delays in market entry. A blanket Section 214 authorization for carriers affiliated with foreign carriers that lack market power is the next logical step and, further, is consistent with the agency's decision in the *Foreign Participation Order* to streamline processing of applications by carriers affiliated with such foreign carriers.

III. The FCC Should Forbear From Requiring CMRS Providers To Obtain International Section 214 Authorization.

Under Section 10 of the Communications Act, the Commission must forbear from applying any provision of the Act if it determines that: 1) enforcement is not necessary to ensure that rates and practices are just, reasonable and not unreasonably discriminatory; 2) enforcement is not necessary to protect consumers; and 3) forbearance is consistent with the public interest.[13]

Forbearance from Section 214 authorization requirements is warranted for CMRS carriers seeking to provide international services. The Commission has recognized that the CMRS marketplace is "more competitive than most telecommunications markets."[14] Competition exists in the international services marketplace and will increase as a result of the recent WTO Agreement. Thus, competitive market conditions will effectively regulate rates. This is true

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[13] 47 U.S.C. § 160(a)(1-3).

[14] *See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 98-100, at 4 (July 2, 1998) ("*PCIA Forbearance Order*").

whether the CMRS carrier resells switched services or provides switched services over private lines to authorized countries.

As new service providers in the market, CMRS carriers lack market power and are in no position to act anticompetitively. These carriers have to use all their resources to compete against each other and incumbent foreign carriers. To gain market share, CMRS carriers necessarily will have to charge competitive rates to capture and retain consumers' business. Continued regulatory oversight under Section 214 is unnecessary to ensure that these carriers' rates and practices are just and reasonable.

Likewise, Section 214 requirements are unnecessary to protect consumer interests. To build a clientele, CMRS carriers, as new entrants in the international marketplace, will have to develop and deploy new products, services and packages. CMRS providers certainly will have to be customer-oriented, otherwise their survival will be jeopardized. CMRS carriers recognize the daunting task before them to attract customers from the well-established carriers. The Commission can be assured that CMRS carriers will operate in the best interests of consumers to gain their business and, therefore, need not continue to impose its Section 214 requirements on these carriers.

Forbearance will serve the public interest. It will eliminate delays in market entry, spur carriers to enter the market, and reduce administrative costs for both the Commission and CMRS carriers. The continued imposition of Section 214 requirements on CMRS carriers seeking to provide international services does nothing to further the public interest. Forbearance is warranted.[15]

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[15] If the Commission decides not to forbear, SBC requests the Commission adopt a blanket Section 214 authorization for CMRS providers.

IV. The Commission Should Forbear From Requiring International Tariffs.

SBC urges the Commission to forbear from international tariffs even though this issue is not directly raised in the NPRM.[16]

All Section 10 statutory criteria for forbearance are satisfied. In light of the competitive conditions in the international marketplace, tariffs are not necessary to ensure that rates and practices are just, reasonable and not unreasonably discriminatory and to safeguard consumer interests. Many of the world's major telecommunications markets, pursuant to the recent WTO Agreement, recently opened to competition. Thus, in most markets, U.S. carriers will be offering services in an increasingly "whole circuit" environment, competing vigorously against each other and the well-established foreign carriers to build market share. U.S. carriers necessarily will use their resources to develop new products and services to distinguish themselves from the incumbent carriers. Further, U.S. carriers will offer consumers competitive rates to capture their business. Accordingly, competition alone will ensure that rates and practices are just and reasonable and that consumer interests are safeguarded.

Eliminating a carrier's obligation to file international tariffs will promote the public interest. New providers of international services, like SBC, have an incentive to compete aggressively outside the "cartel" relationships that have historically characterized the international marketplace. However, to be successful, these new entrants must be able to negotiate with major customers without publicly disclosing the terms of the resulting arrangements to the carriers' competitors.

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[16] If the Commission declines to consider this issue here, at the very least, it should promptly issue a Further Notice of Proposed Rulemaking in this docket because these regulations are ripe for reform.

The Commission previously recognized that international carriers bear excessive administrative costs in complying with Section 214 international tariffing requirements.[17] It streamlined these requirements to allow carriers to file tariffs on one-day's notice. Nevertheless, the streamlined requirements remain a procedural burden that hinders carriers' ability to respond competitively and instantaneously to market fluctuations. Further, the administrative costs from tariff filings can lead to increased prices for consumers or generate resistance to price reductions,[18] results contrary to the agency's pro-competitive goals. Forbearance from international tariffing requirements would "promote competitive market conditions"[19] by motivating U.S. carriers to enter the international market and introduce new, innovative services and packages to consumers.

Forbearance from international tariffing requirements will not cause competitive harm. Virtually all U.S. carriers are non-dominant and, thus, generally lack the ability to act anticompetitively. In fact, the Commission previously determined that tariffs are not essential to ensure that non-dominant carriers charge consumers just and reasonable rates.[20] Further, the FCC's competitive concerns are not raised on affiliated routes where the foreign carrier affiliate lacks sufficient market power on the foreign end because these carriers are not in a position to

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[17] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, 11 FCC Rcd 12884, 12888 (1996).

[18] *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1479 (1994) ("*CMRS Second Report and Order*").

[19] 47 U.S.C. § 160(b).

[20] *CMRS Second Report and Order*, 9 FCC Rcd at 1479.

restrict the output of their services or engage in other types of anticompetitive conduct to the detriment of U.S. consumers and other competing U.S. carriers.

To the extent the FCC remains interested in pricing information, there are other less burdensome means to obtain such information. In particular, as bandwidth has become a commodity product, the agency already has ready access to bandwidth cost information. Several public and private sources, including BAND-X, are a reputable source of capacity cost information accessible through the Internet.

Tariffs only potentially remain important in a few circumstances, such as on affiliated routes where the foreign affiliate possesses market power. Nevertheless, retention of a mandatory tariffing requirement for all carriers is unnecessary, because the Commission could preserve the tariff filing obligation where essential as part of its dominant carrier regulations.[21] Forbearance would release the overwhelming majority of U.S. carriers from the requirement to prepare and file international tariffs.

U.S. carriers, in some instances, may want to file a tariff with the Commission for business reasons. Thus, the Commission should adopt permissive de-tariffing and not impose a mandatory tariffing requirement, especially because such a requirement does not promote the public interest.

Competition is present in the international marketplace and will increase in light of the WTO Agreement. Forbearance from mandatory international tariffing requirements is the next

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[21] In fact, the Commission recognized that, in competitive environments, tariff requirements can actually disserve the public interest by inhibiting price competition, service innovation and the ability of carriers to respond quickly to market trends. *CMRS Second Report and Order*, 9 FCC Rcd at 1479.

logical step after streamlining. Indeed, the Commission has taken steps to forbear from requiring tariffs for domestic services and allow permissive de-tariffing.[22] The time is at hand for the Commission to do the same in the international context and forbear from international tariffing.[23]

V. CONCLUSION

For the foregoing reasons, SBC respectfully urges the Commission to adopt the additional deregulatory measures detailed above. Specifically, SBC requests that the agency expand its proposed regulations and 1) adopt its blanket Section 214 authorization for carriers providing international services to affiliated points where the foreign affiliate lacks market power; 2) forbear from Section 214 requirements for CMRS providers; and 3) forbear from international tariffing requirements.

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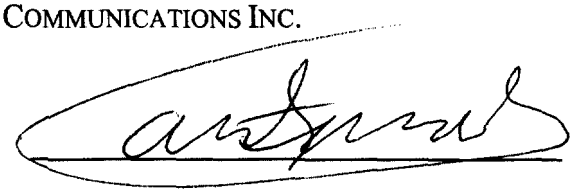
[22] SBC is aware that the FCC's domestic de-tariffing initiatives have been stayed by the D.C. Circuit Court. That case, however, likely will be resolved before completion of this rulemaking. A decision in favor of domestic de-tariffing would strengthen the FCC's authority to forbear from international tariffing.

[23] The Commission also should promptly grant SBC's pending Petition for Reconsideration of the Foreign Participation Order (filed Jan. 8, 1998) in which it proposes a number of deregulatory measures. *See also* SBC's ex parte letter to FCC Chairman William Kennard (filed May 27, 1998).

Respectfully submitted,

SBC COMMUNICATIONS INC.

By: 

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August 13, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August , 1998, I caused copies of the foregoing "Comments Of SBC Communications Inc. On The Notice Of Proposed Rulemaking Regarding International Common Carrier Regulations" to be sent via hand-delivery to the following:

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